

Prince Declaration

Exhibit 5

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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HACHETTE BOOK GROUP, INC.,
HARPERCOLLINS PUBLISHERS LLC,
JOHN WILEY & SONS, INC., and
PENGUIN RANDOM HOUSE LLC,

Plaintiffs,

vs. Case No. 1:20-cv-04160-JGK

INTERNET ARCHIVE and DOES 1
through 5, inclusive,

Defendants.
-----x

REMOTE VIDEOTAPED DEPOSITION BY VIRTUAL ZOOM OF
SUSAN HILDRETH
Monday, May 17, 2022

Reported By: Lynne Ledanois, CSR 6811
Job No. 5228055

1 MS. McNAMARA: Jessie, and I would suggest
2 to you we have had a strict rule in these
3 depositions that you do not have speaking
4 objections.

5 You can say objection to form. You can
6 say, you know, something like vague. But you get
7 into specifics, you're coaching the witness and I
8 ask you to stop.

9 MS. LANIER: Well, I respectfully object
10 to your classification of my objections as coaching
11 the witness. I also don't think that was a speaking
12 objection.

13 I'd just ask you to rephrase the question,
14 please.

15 MS. McNAMARA: I'll ask the witness to do
16 so, not you.

17 Q Ms. Hildreth --

18 MS. McNAMARA: Can we have read back the
19 last question?

20 (Discussion off the record.)

21 (Requested testimony read by the reporter.)

22 MS. LANIER: Same objection.

23 BY MS. McNAMARA:

24 Q Can you answer the question, Ms. Hildreth?

25 A I understand that a specific author would

1 not receive a royalty for a specific title. I am
2 looking at the situation in my mind more globally in
3 terms of overall what royalties would go to not a
4 specific author but a number of authors.

5 So that's my response to that.

6 Q If the specific title that was available
7 through CDL was *Catcher in the Rye* by J.D. Salinger,
8 let's say, and you would agree that then the
9 Salinger estate would not receive a royalty if that
10 work was available via the Internet Archive and CDL?

11 MS. LANIER: Objection, calls for
12 speculation.

13 THE WITNESS: I'd have to know the context
14 of that question and I mean -- frankly, I'd have to
15 know the context of the question and there could be
16 many other avenues for obtaining access to
17 *The Catcher in the Rye* than purely relying
18 necessarily on CDL or the Digital Lending Library
19 for it.

20 BY MS. McNAMARA:

21 Q Do you have a general opinion,
22 Ms. Hildreth, as to whether the plaintiffs have
23 suffered any economic harm as a result of the
24 Digital Lending Library?

25 A I'm challenged in answering that question

1 A My opinion is not necessarily based on fact.
2 But from what I know of the e-book demand for --
3 generally in public libraries in the CD O or available
4 at a Digital Lending Library is a factor there.

5 But the demand for e-books and the revenue
6 that publishers and authors have had from the
7 expansion of the e-book market in public libraries
8 would lead me to the opinion that publishers and
9 authors are receiving -- are receiving funds as a
10 result of e-books in the library marketplace.

11 Q The question really was not whether they
12 are receiving funds in the library marketplace,
13 because as I understand your testimony, you
14 recognize that there is a thriving e-book licensing
15 market for libraries; isn't that right?

16 A Yes.

17 Q And it's a thriving e-book market that has
18 increased in recent years; isn't that right?

19 A Correct, yes.

20 Q And that e-book market is predicated on
21 licensing revenues that are paid by libraries to
22 entities like OverDrive; is that right?

23 A Correct, yes.

24 Q And CDL does not pay those same licensing
25 revenues or Internet Archive's CDL practices do not

1 pay those same licensing revenues, isn't that right?

2 MS. LANIER: Objection, compound.

3 BY MS. McNAMARA:

4 Q You can answer the question.

5 A Yes, as far as I understand, yes.

6 Q They do not pay those licensing revenues?

7 A Yes.

8 Q Now, let's turn to your qualifications
9 that support your expert report.

10 You indicate that you are currently a
11 library consultant; is that right?

12 A Yes. Could I ask if you're referring to a
13 certain part of the report that I should be referring
14 to?

15 Q I believe Paragraph 1 you say --

16 A Oh, okay.

17 Q -- "I am currently working as a library
18 consultant."

19 A Yes.

20 Q You say that you're currently working as a
21 library consultant focusing on library executive
22 recruitment, strategic planning, organizational
23 review and community engagement; is that right?

24 A Yes.

25 Q Is that a full-time occupation?

1 budget for e-books was being serviced through CDL,
2 then if I understand your testimony correctly, they
3 would redirect that -- those acquisition funds to
4 other services provided by the library; is that
5 right?

6 MS. LANIER: Objection, vague.

7 THE WITNESS: Again, I would want to look
8 at the context that -- of the library services, the
9 neighborhood, the community. They might determine
10 that they wanted to spend more funds on languages
11 in -- on non-world languages to enhance their
12 collection.

13 They might decide that they would spend,
14 if additional funds were available, on community
15 outreach, which would not necessarily be part of the
16 acquisitions budget.

17 But the point that I would like to try to
18 be clear about is I do not think that because a
19 library might be able to achieve some of its
20 acquisitions content through CDL, I don't think that
21 the initial reaction to that at the local level
22 would be to reduce the library budget by a
23 commensurate amount.

24 BY MS. McNAMARA:

25 Q I understand that. But I also understand

1 from your testimony that what the funding entity,
2 whether it be state or local would do, would be to
3 redirect those funds to other services; is that
4 correct?

5 MS. LANIER: Objection, vague.

6 THE WITNESS: I stated that -- and I would
7 continue to assert that the funds could well be used
8 for further different types of acquisitions. They
9 also could be used for other types of services.

10 You would have to look at the specific
11 context to make that determination. I don't think
12 it's a situation where you can make a global
13 statement or a generalized statement.

14 BY MS. McNAMARA:

15 Q In Paragraphs 65 and 66 of your report,
16 you indicate that library budgets have generally
17 increased over the last ten years; is that right?

18 A That's correct.

19 Q Are you aware that during the pandemic,
20 libraries were awarded federal stimulus money?

21 A Yes.

22 Q Do you know approximately how much
23 stimulus money was awarded?

24 A I don't want to make a guess, an uninformed
25 guess, no.

1 Q Does \$250 million sound approximately
2 correct?

3 MS. LANIER: Objection, asked and
4 answered.

5 BY MS. McNAMARA:

6 Q Do you know the answer?

7 A The reason why I hesitate to agree to
8 250 million is that's a very similar amount to the
9 block grant funding for the states.

10 That could be the amount. But I'm sorry,
11 I didn't follow that closely, so I don't have
12 specific knowledge.

13 Q Are you aware that the money awarded via
14 the federal stimulus package was used for libraries
15 to license e-books?

16 A I don't -- I would not -- it would not be
17 unreasonable if that were an eligible expense. I
18 don't know that for certain.

19 Q Are you aware that some publishers adapted
20 their terms so that the money from the federal
21 stimulus package could be spent on licensing
22 e-books?

23 MS. LANIER: Objection, calls for
24 speculation.

25 THE WITNESS: I'm not aware that that

1 happened, but that would be wonderful if it
2 happened.

3 BY MS. McNAMARA:

4 Q In Paragraph 67 you say, "There are still
5 patrons who want to read print books and don't see
6 technology or digital materials as their primary
7 method of engaging in the world."

8 Do you see that?

9 A Yes.

10 Q Do you know what, if anything, Internet
11 Archive offers to patrons who do not want to engage
12 with digital media?

13 A I'm not aware of what they do to provide --
14 to service patrons that don't want to deal with
15 digital media.

16 Q Okay. Your report discusses acquisition
17 budgets.

18 Are you familiar with that?

19 A Yes.

20 Q I believe that's in -- starts in
21 Paragraph 69 of your report.

22 A Yes.

23 Q Your report indicates that there are a
24 number of different things that -- other than books
25 that libraries purchase with their acquisition

1 budgets, including magazines and reference
2 materials, nonprint physical content like CDs or
3 DVDs or videos or streaming services and also
4 objects to loan including libraries of things, tools
5 and games.

6 Do you see that?

7 A Yes.

8 Q And these are all materials that libraries
9 may purchase with their acquisition budgets; is that
10 correct?

11 A Yes.

12 Q What are library of things?

13 A Oh, the library of things is a service that
14 libraries are providing where they purchase games,
15 tools, different kinds of creative activities. So
16 they actually loan like a tool or a game as opposed to
17 loaning a print or an e-copy of something.

18 Q Do you know with regard to these things
19 that you can acquire through the acquisition
20 budgets, whether it be magazines or CDs or DVDs or
21 videos or tools or games, do you know whether any of
22 those things are available or subject to CDL?

23 MS. LANIER: Objection, vague.

24 THE WITNESS: I really don't know. I
25 don't -- I don't know.

1 And the one that I have -- I have no idea
2 if there would be some kind of CDL implication with
3 the streaming services. But I don't think that CDL
4 is subject to these other categories.

5 BY MS. McNAMARA:

6 Q Do you know of any libraries that have
7 elected to rip and distribute DVDs on an
8 owned-to-loaned basis?

9 MS. LANIER: Objection, vague.

10 THE WITNESS: Could you repeat the
11 question?

12 BY MS. McNAMARA:

13 Q Are you aware of a practice where you
14 could take a DVD and rip it and create a copy of it?

15 MS. LANIER: Same objection.

16 THE WITNESS: Well, first of all, CDs and
17 DVDs are really being phased out of libraries in
18 lieu of streaming services.

19 I do not know of libraries that have done
20 that practice with DVDs.

21 BY MS. McNAMARA:

22 Q Wouldn't the same principle arguably apply
23 to DVDs as books if the library could leverage it in
24 some fashion to make it available to its users?

25 MS. LANIER: Objection, vague, lacks

1 foundation.

2 THE WITNESS: I don't feel qualified to
3 respond to that question.

4 BY MS. McNAMARA:

5 Q If libraries can leverage their print
6 collections of books through a CDL, could that free
7 up money in the acquisition budget for these nonbook
8 categories?

9 A It certainly could do that. It could also
10 free up money for fiction and nonfiction in print and
11 digital formats as well as some of these other
12 categories.

13 BY MS. McNAMARA:

14 Q You would agree that if they were able to
15 leverage print collections through CDL and they
16 freed up some acquisition budget, they could use
17 that money to buy movies; is that right?

18 A They would probably use that money to
19 support access to streaming services. And I also
20 think they would use that for acquisition of
21 additional digital or print materials.

22 The lion's share, if you will, or the
23 largest share of these materials budgets are
24 allocated to fiction and nonfiction print and
25 digital. So I would imagine that additional funds

1 could go there.

2 They could also go to these other
3 categories, but the other categories are not the
4 primary categories in the acquisition budgets.

5 Q But you agree that the acquisition -- the
6 fund freed up through CDL could go to purchasing
7 video games or other nonbook categories; isn't that
8 right?

9 MS. LANIER: Objection, asked and
10 answered.

11 THE WITNESS: Yes, they could.

12 BY MS. McNAMARA:

13 Q So doesn't that undermine your thesis that
14 libraries will spend the same amount of money on
15 books and e-books regardless of whether CDL is
16 implemented?

17 MS. LANIER: Objection, vague.

18 THE WITNESS: As I said previously, the
19 materials budget has many different elements in it
20 and although it could be that if funds were freed
21 up, they'd be used to add some tools to the tool
22 lending library, there's -- depending on the context
23 and the requirements of the users, because the large
24 share of collections are in fiction and nonfiction
25 digital and print, I think it's just as likely, if

1 not more likely, that those funds would be used to
2 buy additional e or print copies materials.

3 BY MS. McNAMARA:

4 Q But you're speculating on that, aren't
5 you?

6 MS. LANIER: Objection, mischaracterizes
7 prior testimony.

8 THE WITNESS: Because the -- because
9 libraries have had -- over the last ten years, they
10 have shifted their budgets to obtain more and more
11 e-content and e-books, and they have not ever really
12 been able to satisfy in most cases the demand for
13 e-books, I don't feel that it's complete speculation
14 to say that e-books are one of the most
15 highly-demanded items in this acquisitions budget
16 and that it would be -- it would not be unusual that
17 more e-books were added because e-books I think
18 they've reduced -- they're reducing expenses for
19 print format. They are increasing expenses for
20 digital format and they do not have sufficient money
21 in those budgets to address all the requests for
22 digital formats.

23 So I think it's highly likely that
24 additional funds would be allocated to digital
25 format purchases.

1 MS. LANIER: Objection, vague, calls for
2 speculation.

3 THE WITNESS: I don't have knowledge that
4 would help inform my answer whether they would or
5 wouldn't do that.

6 BY MS. McNAMARA:

7 Q My question wasn't whether they would or
8 wouldn't do it.

9 I was saying since you've agreed nothing
10 binds them to five years, they could change that
11 tomorrow if they wanted; isn't that right?

12 MS. LANIER: Same objection and asked and
13 answered.

14 THE WITNESS: It's not unreasonable that
15 they could do that. But I am not -- there is no
16 reason for me to believe that they necessarily would
17 do that.

18 BY MS. McNAMARA:

19 Q The reallocation -- I mean, you say in the
20 next sentence, "They would reallocate their spending
21 away from e-book licensing for those titles being
22 accessed through CDL and would spend more on e-book
23 licensing for newer titles or on print books." Is
24 that correct?

25 A Yes.

1 Q Again, what is the basis for your
2 contention that libraries would reallocate their
3 spending away from the titles that are available
4 through CDL and instead use that same money for
5 newer titles or on print books?

6 A Again, I would refer to my practice and
7 experience of acquisitions approaches in libraries
8 where they were -- are always trying to obtain
9 additional copies of e-books and/or new print books.

10 Q And so in this scenario that you're
11 describing in Paragraph 106, the library would no
12 longer be paying licenses for the e-books that are
13 available via CDL; is that right?

14 MS. LANIER: Objection, vague.

15 THE WITNESS: Yes, that's correct.

16 BY MS. McNAMARA:

17 Q And the spending on e-book licensing,
18 either the new books or on print books, would be for
19 different works, would it not?

20 MS. LANIER: Objection, vague.

21 THE WITNESS: I think in some cases it
22 would be for different works.

23 BY MS. McNAMARA:

24 Q Is your argument here in Paragraph 106
25 that the publishers will not suffer any financial

1 harm because libraries have a fixed amount of money
2 to spend on acquisitions every year and will
3 inevitably spend it all?

4 MS. LANIER: Objection, vague.

5 THE WITNESS: My position here is that in
6 most circumstances, the library would spend all of
7 its materials acquisitions budget on e-books or
8 print books and, therefore, even though the spending
9 might be in somewhat different formats, the
10 publishers would receive revenues from those
11 acquisitions.

12 BY MS. McNAMARA:

13 Q But you've agreed that they would not
14 receive revenue for the works that they are
15 obtaining through CDL; isn't that right?

16 MS. LANIER: Objection, asked and answered
17 and mischaracterizes previous testimony.

18 THE WITNESS: Yes.

19 BY MS. McNAMARA:

20 Q In Paragraph 106 you're talking about
21 libraries generally; is that correct?

22 A I'm talking about specifically really my
23 experience in public libraries.

24 Q And again, do you feel comfortable with
25 your expert opinion that what you're stating in

1 Q Internet Archive is not primarily funded
2 by tax dollars, are they?

3 MS. LANIER: Objection, calls for
4 speculation.

5 THE WITNESS: I don't know all of their
6 revenue sources, but I don't think the primary
7 sources are public dollars.

8 BY MS. McNAMARA:

9 Q To the degree that e-books are available
10 through CDL on Internet Archive, the user is not
11 getting the benefit of any original acquisition or
12 payment of tax dollars by Internet Archive, are
13 they?

14 MS. LANIER: Objection, vague.

15 THE WITNESS: I would say correct.

16 BY MS. McNAMARA:

17 Q Paragraph 107 of your report, you indicate
18 in the last sentence, "Because of these required
19 expenses, the materials budget, which is
20 discretionary compared to other expenditures, is
21 often used as the budget balancer on an annual
22 basis - meaning that where reductions must be made
23 to balance the budget, those reductions are often
24 made to the materials budget."

25 Do you see that?

1 A Yes.

2 Q Are you suggesting that acquisition
3 budgets are at particular risk of being squeezed
4 because they are discretionary?

5 MS. LANIER: Objection, vague as to
6 "squeezed."

7 THE WITNESS: I am suggesting that it is
8 not uncommon that required expenses -- legally
9 required expenses, say insurance or updating of fire
10 equipment or a variety of expenses that are required
11 to keep a building open to the public may take
12 priority over expenses allocated to materials.

13 BY MS. McNAMARA:

14 Q In Paragraph 109 of your report, you
15 indicate that "In light of the priority of materials
16 acquisition and the current state of limited budgets
17 for those materials, libraries would not reduce
18 their materials budgets if reliance on CDL for
19 certain digital content reduced their spending on
20 the particular titles that were provided through
21 CDL."

22 Do you see that?

23 A Yes.

24 Q Is it your expert opinion that libraries
25 will spend less money on licensing the e-book

1 Q Do you have data that is available to you
2 that would cover e-books licensing should CDL become
3 common in the 9,000 -- what was it, 9,000?

4 A 9,000 systems.

5 Q The 9,000 library systems, do you know of
6 any data that would indicate what these 9,000
7 libraries would do with regard to reallocation of
8 their resources should they all start to employ CDL?

9 A I don't have any immediate awareness of data
10 in terms of the 9,000 library systems. There could be
11 some kind of analysis done on a couple of sample
12 libraries to see what the trends might be.

13 Q Do you know whether any public library has
14 done -- has created data concerning their
15 reallocation of e-book licenses when they use CDL?

16 A I'm not aware of any that have done that.

17 Q And we've established in your testimony
18 that a relative handful of public libraries are
19 actually using CDL; isn't that right?

20 MS. LANIER: Objection, vague and
21 mischaracterizes previous testimony.

22 THE WITNESS: I would say that we can
23 agree in terms of public libraries that have signed
24 on to the CDL statement, that's a limited number.
25 And there hasn't been a data set created as far as I

1 know that has determined what public libraries are
2 or not using CDL.

3 BY MS. McNAMARA:

4 Q And -- but we also did look -- in addition
5 to the public libraries that signed on to the
6 controlled digital lending statement, we looked at
7 the public libraries that have been identified as
8 partner libraries with Internet Archive.

9 Do you recall that?

10 A Yes.

11 Q Do you recall that there were
12 approximately six or seven public libraries that
13 have become partner libraries with the Internet
14 Archive?

15 A Yes.

16 Q So any data set arising out of the
17 practices of those six or seven libraries, do you
18 believe that that would be representative of the
19 9,000 public libraries that exist in the United
20 States?

21 MS. LANIER: Objection, vague, lacks
22 foundation.

23 THE WITNESS: If I were to attempt to do
24 an analysis, which I'm not necessarily going to do,
25 I would not feel that I had to be bound by either

1 the signatories to the controlled digital lending
2 statement or the partner libraries in terms of who
3 is using CDL to access and review the kind of
4 information that we're talking about.

5 I would want to determine some kind of a
6 sampling that had a large, medium, small library
7 using CDL to do a very simple analysis.

8 BY MS. McNAMARA:

9 Q And how would you conduct that sample
10 analysis with today's data?

11 A I would have to think about that. I have
12 not developed a plan for that.

13 Q But are you planning to do such an
14 analysis?

15 MS. LANIER: Objection, asked and
16 answered.

17 THE WITNESS: I really have to think about
18 it and I'm not committed to do doing that.

19 BY MS. McNAMARA:

20 Q I'm not asking you whether you're
21 committed, Ms. Hildreth.

22 I'm trying to understand that if you were
23 to conduct such an analysis, how would you go about
24 getting that data and conducting an analysis that
25 could be deemed to be representative of the 9,000

1 public libraries in the United States?

2 MS. LANIER: Objection, vague.

3 THE WITNESS: I think it could be very
4 challenging to do that analysis. I think what you
5 could come up with is a sampling that might identify
6 a trend.

7 But at this point the data collection is
8 not universally done so that you would have a
9 statement and could represent what might be
10 happening in most public libraries in the U.S.

11 BY MS. McNAMARA:

12 Q Thank you.

13 You were asked the question: Do you know
14 whether the availability of books on the Digital
15 Lending Library has, in fact, had any effect on
16 demand for e-book licenses?

17 You said: I don't know.

18 Do you see that -- I mean do you
19 understand that?

20 A Yes, I understand that.

21 Q So you can't say that the availability of
22 e-books on the Digital Lending Library has had no
23 demand for e-book licenses, can you?

24 MS. LANIER: Objection, vague.

25 THE WITNESS: I can say that I don't know

1 I, LYNNE M. LEDANOIS, a Certified
2 Shorthand Reporter of the State of California, do
3 hereby certify:

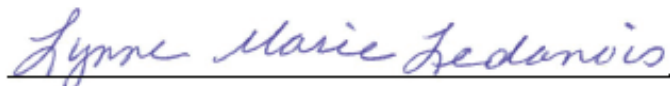
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that a record of the proceedings was made by me
7 using machine shorthand which was thereafter
8 transcribed under my direction; that the foregoing
9 transcript is a true record of the testimony given.

10 Further, that if the foregoing pertains to
11 the original transcript of a deposition in a Federal
12 Case, before completion of the proceedings, review
13 of the transcript [X] was [] wasn't requested.

14 I further certify I am neither financially
15 interested in the action nor a relative or employee
16 of any attorney or party to this action.

17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.

19
20
21 Dated: May 19, 2022

22
23 
24

25 _____
LYNNE MARIE LEDANOIS

CSR No. 6811